



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 00 090 52634 Office: Vermont Service Center Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER

Public Copy

INSTRUCTIONS:

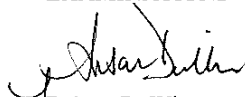
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary as a food and beverage manager for a three-year period. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel explains that the [REDACTED] Restaurant is not a small ordinary restaurant, but a "Fine Indian Cuisine." Counsel argues that there is a norm in the restaurant industry to hire a professional for the position of food and beverage manager with at least a baccalaureate degree in the field of restaurant and hotel management. Counsel submits a letter from a vineyard in California indicating that the beneficiary has participated in wine tasting with the owners of that vineyard, and that they have appreciated his comments and opinions concerning the wines tasted.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary completed a three year program earning a Bachelor of Commerce degree at the University of Bombay in 1987 in India. The beneficiary also earned a Diploma in Hotel and Tourism Management from the International Institute of Tourism and Management in 1991, and the title of Wine Steward from the Wifi Salzburg Trade School in 1998 in Austria. An educational evaluation submitted by the petitioner indicates that he has earned the equivalent of a Bachelor of Science Degree in Hotel Management and Restaurant Management from an accredited institution of higher education in the United States.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position are listed as:

1. Coordinate food services of the organization;
2. Estimate food and beverage costs and purchase requisitions and supplies accordingly;
3. Confer with food preparation and other personnel to plan menus and related activities as during room, bar, and banquet operations;
4. Review financial transactions and monitor budget to ensure efficient operation.

The petitioner has provided four letters from individuals knowledgeable in the restaurant industry. Two of these letters emphasize the beneficiary's achievements and recommend him highly. The third letter indicates that it is common practice for its group of four restaurants to seek out and hire men and women for its management positions who have achieved a baccalaureate level of education and who possess a broad base of food and wine knowledge. The fourth letter from the proprietor of a New York Italian restaurant states that over a nine year period, all of the five food and beverage managers the firm has hired have been at least bachelors degree holders. The writers of these letters have not provided evidence in support of their assertions. These letters provide insufficient evidence that a baccalaureate degree in a specialized area represents an industry standard for the offered position. In addition, there is no indication in the record of the number or percentage of food and beverage managers who hold such degrees.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

The duties listed above are primarily those of a restaurant and food service manager. In its Occupational Outlook Handbook, 2000-2001 edition, at pages 76-78, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required for employment as a restaurant and food service manager. While a bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in these positions, most of them are filled by promoting experienced food and beverage preparation and service workers. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.